

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

VERMONT FEDERATION OF SPORTSMEN'S
CLUBS, *et al.*

Plaintiffs,

v.

MATTHEW BIRMINGHAM, *et al.*,

Defendants.

Case No. 2:23-cv-710

**PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

NOW COME Plaintiffs, by and through undersigned counsel, and hereby file the following Notice of Supplemental Authority:

1. Attached hereto is a recent decision of the Ninth Circuit in *United States v. Duarte*, No. 22-50048, 2024 U.S. App. LEXIS 11323 (9th Cir. May 9, 2024).
2. In *Duarte*, the Court held that “The Second Amendment guarantee[s] to ‘all Americans’ the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions” and the Court therefore “reject[ed] the Government's position that ‘the people,’ as used in the Second Amendment, refers to a narrower, ‘unspecified subset’ of virtuous citizens.” *United States v. Duarte*, No. 22-50048, 2024 U.S. App. LEXIS 11323, at *25 (9th Cir. May 9, 2024). The *Duarte* court emphatically held that the Second Amendment applies by its plain text to all American citizens.
3. As to *Bruen*’s “second step” – finding historical analogs to modern regulations – the *Duarte* court cited *Bruen* for the proposition that “Courts should not

uphold every modern law that remotely resembles a historical analogue because doing so risk[s] endorsing outliers that our ancestors would never have accepted.” *Id.* at *66. The Court therefore emphasized that it is not an analog if the State can point to a historical law that merely “remotely resembles” a modern law. *Id.*

WHEREFORE, Plaintiffs respectfully submit that this Court should apply the principles of *Duarte* and should hold that Vermont’s distinction between weaponry that is available to ordinary citizens and that which is available to law enforcement – or certain classes of “grandfathered” citizens – is inconsistent with any historical tradition and with the plain text of the Second Amendment, which guarantees a right to “the people” and not to any “unspecified subset” of virtuous citizens that Vermont might wish to enjoy special protection.

Respectfully submitted,

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